

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WPIX, INC., WNET.ORG, AMERICAN
BROADCASTING COMPANIES, INC., DISNEY
ENTERPRISES, INC., CBS BROADCASTING
INC., CBS STUDIOS INC., THE CW TELEVISION
STATIONS INC., NBC UNIVERSAL, INC., NBC
STUDIOS, INC., UNIVERSAL NETWORK
TELEVISION, LLC, TELEMUNDO NETWORK
GROUP LLC, NBC TELEMUNDO LICENSE
COMPANY, OFFICE OF THE COMMISSIONER
OF BASEBALL, MLB ADVANCED MEDIA, L.P.,
COX MEDIA GROUP, INC., FISHER
BROADCASTING-SEATTLE TV, L.L.C.,
TWENTIETH CENTURY FOX FILM
CORPORATION, FOX TELEVISION STATIONS,
INC., TRIBUNE TELEVISION HOLDINGS, INC.,
TRIBUNE TELEVISION NORTHWEST, INC.,
UNIVISION TELEVISION GROUP, INC., THE
UNIVISION NETWORK LIMITED
PARTNERSHIP, TELEFUTURA NETWORK,
WGBH EDUCATIONAL FOUNDATION,
THIRTEEN, and PUBLIC BROADCASTING
SERVICE,

Plaintiff,

v.

IVI, INC. and TODD WEAVER,

Defendants.

Docket No. 10 Civ. 7415 (NRB)

DECLARATION OF ELLEN M. BIERMAN IN SUPPORT OF
IVI, INC. AND WEAVER'S OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

I, Ellen M. Bierman, hereby declare as follows:

1. I am an attorney and Member of Black Lowe & Graham, PLLC, with offices located at 701 Fifth Avenue, Suite 4800, Seattle, WA 98005. I submit this Declaration in connection with Defendants' Opposition to Motion For Temporary Restraining Order and/or Preliminary Injunction.

2. Attached as Exhibit 4 is a true and correct copy of excerpts from Copyright Law Revision, H. R. Rep. No. 94-1476 p. 89-90 (1976).

3. Attached as Exhibit 5 is a true and correct copy of the Copyright Office's Notice of Proposed Rulemaking published as *Cable Compulsory License; Definition of Cable Systems*, 56 Fed. Reg. 31580 (1991).

4. Attached as Exhibit 6 is a true and correct copy of the Copyright Office's Final Rulemaking published as *Cable Compulsory License; Definition of Cable Systems*, 57 Fed. Reg. 3284 (1992).

5. Attached as Exhibit 7, upon information and belief, is a true and correct copy of the complaint (unexecuted) in the case of *Twentieth Century Fox Film Corp. et al. v. iCraveTV*, Civil Action No. 00-120, (WDPA 2000).

6. Attached as Exhibit 8 is a true and correct copy of the first 4 pages and the last 4 pages from a listing of companies that have submitted Statements of Account under Section 111 to the Copyright Office. The entire listing of companies comprises 133 pages and contains over 7,000 entities. For this reason, in order to reduce the volume of the submission, only the initial and final pages are attached.

7. Attached as Exhibit 9 is a true and correct copy of an online article from www.fiercetelecom.com entitled "Two rural telcos select ADSL2+ over fiber" dated June 17, 2008. This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

8. Attached as Exhibit 10 is a true and correct copy of an online article from www.connectedplanetonline.com entitled "Consolidated, Ruckus takes the wires out of IPTV" dated September 8, 2009. This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

9. Attached as Exhibit 11 is a true and correct copy of excerpts from the Arkwest Communications website at www.arkwest.com – frequently asked questions. This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

10. Attached as Exhibit 12 is a true and correct copy of an online article from www.prnewswire.com entitled "Tut Systems Unleashes Third Wave of IPTV Deployments." This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

11. Attached as Exhibit 13 is a true and correct copy of an online article from www.lightreading.com entitled "SureWest Flexes IPTV Muscle" dated August 13, 2008. This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

12. Attached as Exhibit 14 is a true and correct copy excerpts from the United Communications website at www.utma.com – about us. This entity indicates that it provides Internet Protocol television, and I have further verified that this entity is included among the listing of Section 111 entities partially excerpted in Exhibit 8.

13. Attached as Exhibit 15 is a true and correct copy of *In re Sky Angel*, 25 FCC Rcd 3879 (Media Bur. 2010).

14. Attached as Exhibit 16 is a true and correct copy of the General Instructions for completing Copyright Office form SA1-2, the Statement of Account for statutory licensees under Section 111. These instructions are provided by the Copyright Office at

<http://www.copyright.gov/forms/SA1-2-2010.pdf>. At page ii of the Instructions, yellow highlighting has been added to the portion stating, “A system that meets this definition is considered a cable system for copyright purposes, even if the FCC excludes it from being considered a cable system because of the number or nature of its subscribers or the nature of its secondary transmissions.”

15. Attached as Exhibit 17 is a true and correct copy of excerpts from the Satellite Home Viewer Extension and Reauthorization Act, Section 109 Report, in June, 2008, including pages 19, 35, 67, 186, 197-199.

16. Attached as Exhibit 18 are true and correct copies of printouts from the FCC database in response to queries concerning whether Hulu and Major League Baseball are licensed by the FCC as cable companies for the transmission of television on the Internet. In each case, the database responds that there are no matches and therefore no licenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Ellen M. Bierman

October 21, 2010